

Nebraska Income Tax For Military Servicemembers

Check our Web site for a supplement to this guide containing specific information for participants in designated combat zones.

Revised February, 2004

For more information, check our Web site: www.revenue.state.ne.us



The purpose of this information guide is to explain how to file your Nebraska Individual Income Tax Return if you are a member of the armed forces, including a public health service officer, or a military dependent.

What is the general rule for state taxation of military servicemembers?

The Servicemembers Civil Relief Act provides that active duty military service pay is subject to income tax only by the state in which the servicemember is a **legal resident**.

What determines your legal residence?

The place of residence at the time of entry into the service is presumed to be the state of legal residence and remains so until legal residence in another state is established.

Residence For Servicemembers. An individual's legal residence is the same as his or her place of domicile. Domicile is the place that a servicemember regards as a permanent home. No change of legal residence (domicile) results from moving to a new location for a limited period of time, including a permanent change of station. Physical presence in a state is not necessarily domicile.

Residence For Military Dependents. Military dependents, including the spouse and children of the military member, are not protected from a change in their residence for tax purposes. Instead, once they are present in this state, the following situations result:

- If the military dependents have been in Nebraska for the entire year they are full-year residents.
- If the military dependents have been in Nebraska for more than six months, but less than one year, they are partial-year residents for the period of time spent in the state.
- If the military dependents have been in Nebraska for less than six months, they are considered nonresidents, unless they choose to change their residence to this state and file as partial-year residents for the period of time spent in this state.
- The six-month automatic residence provision does not apply to the military servicemember. The military servicemember, however, may also change his or her legal residence. Unless the servicemember produces evidence and has the intent to change his or her legal residence, the Servicemembers Civil Relief Act prevents a change in legal residence solely because of physical presence in a state.

Change Of Legal Residence. To make a change of legal residence the person must have a physical presence in the new state, as well as show intent to establish residence in that state and to abandon the prior residence. Intent to change residence can be shown by:

- Purchasing a home in the new state for use as a principal residence;
- Paying taxes as a resident of the new state;
- Obtaining a driver's license as a resident;
- Registering a motor vehicle as a resident;
- Obtaining a hunting or fishing permit as a resident.

If there has been a change of residence to another state, the taxpayer must supply the Nebraska Department of Revenue with copies of three documents substantiating the change.

Do military servicemembers who are Nebraska residents file a Nebraska return?

All persons who are Nebraska residents for the entire year and who are required to file a federal income tax return must file a Nebraska Individual Income Tax Return, Form 1040N. This includes all Nebraska servicemembers and military dependents who are domiciled in Nebraska, that is, legal residents of Nebraska, including those living outside Nebraska.

What Is Subject To Tax. The entire federal adjusted gross income of a resident, as adjusted for state tax purposes, is subject to tax by the state of Nebraska. There is no adjustment for military pay or for income earned outside Nebraska. Instead, a credit is allowed for income taxes paid to another state. In order to obtain this credit complete a Nebraska Schedule II, Credit for Tax Paid to Another State for Full Year Residents, and attach to the Form 1040N a copy of the return filed with the other state.

Do nonresidents who are physically present in Nebraska for a period of duty file a Nebraska return?

All nonresidents with income from Nebraska sources who are required to file a federal return must file a Nebraska return.

What Is Subject To Tax. The active duty military pay received by this military servicemember is protected from Nebraska tax by the Servicemembers Civil Relief Act. Other income received from **Nebraska sources**, is subject to Nebraska income tax.

However, if you are a nonresident and make the “joint election” explained on this page, you can deduct your active duty military pay on Nebraska Schedule I, line 52 and write “Nonresident military service compensation.” All other income is subject to Nebraska tax, however.

Nebraska Source Income Defined. Nebraska source income is all income earned in Nebraska from the conduct of a trade or business, from real or personal property, or from civilian employment. Civilian employment includes working for a nonappropriated fund activity, such as post exchanges, military stores, or officers’ clubs, whether located on or off the military installation. Nebraska source income is subject to tax for Nebraska purposes.

Do military members and their spouses who are partial-year residents file a Nebraska return?

Partial-year residents must file with Nebraska if they have Nebraska source income. Nebraska source income is defined in the preceding paragraph. This is true for both the military member and the spouse.

Where the partial-year resident, during the next tax year, is in the state from January through December, he or she becomes a full-year resident. For filing instructions, see the section entitled “When must you file a married filing separate return?”

What Is Subject To Tax. The active duty military pay received by this military servicemember while a resident of another state is protected from Nebraska tax by the Servicemembers Civil Relief Act. Other income received from **Nebraska sources** is subject to Nebraska income tax.

Military pay and all other income received while a resident of Nebraska, that is not taxed by another state, is subject to Nebraska income tax.

However, if you are a nonresident or partial-year resident and make the “joint election” explained below, you can deduct on Nebraska Schedule I your active duty military pay received while a nonresident. Also complete Nebraska Schedule III to report your spouse’s Nebraska income and any other income received from Nebraska sources.

Nebraska Adjustments to Income, Schedule I, Form 1040N, may be completed by any nonresident or partial-year

resident. Adjustments cannot be made for income earned in another state. An adjustment for the amount of your active duty military pay received while a nonresident may be made on Schedule I.

Computation of Nebraska Tax for Nonresidents and Partial-Year Residents Only, Schedule III, Form 1040N.

The tax liability of any nonresident or partial-year resident is a percentage of what a resident’s liability would be on the same amount of income, excluding active duty military pay received while a nonresident. All of the nonresident’s or partial-year resident’s income, including income from another state, (but not including active duty military pay received as a nonresident), is used in calculating the tax on Nebraska source income.

When must you file a joint return?

Joint Nebraska returns must be filed when a federal joint return has been filed, and:

- **Both spouses are residents** of Nebraska for the entire year;
- **Both spouses are nonresidents** of Nebraska for the entire year, and at least one spouse has income earned from a Nebraska source; or
- The military spouse is a nonresident of Nebraska for the entire year, the civilian spouse is in Nebraska less than six months of the year and at least one spouse has income earned from a Nebraska source.

Joint Return By Election. This election may be made if one spouse, for any part of the year, is a Nebraska resident (partial-year or full-year) while the other spouse is a nonresident. A joint return must have been filed federally. By making this election, both spouses are taxed as Nebraska residents or partial-year residents for the period either spouse was a resident of Nebraska. Any active duty military pay of the nonresident is not taxed by Nebraska. Refer to the chart on the opposite page for more information.

Revocation Of The Election. The election to be taxed as residents or partial-year residents may be revoked by the couple at any time during which a claim for refund can be filed. See the section with the heading “Statute of Limitations”. The election can be changed for other taxable years only if the federal filing status is changed. The revocation of the election is effective only when the following conditions have been satisfied:

- Both spouses file Nebraska separate returns. The spouse whose social security number was listed first files an Amended Nebraska Individual Income Tax Return, Form 1040XN. The spouse whose social security number was listed as the spouse’s number on the original joint return files a Nebraska Individual Income Tax Return, Form 1040N;
- A copy of the federal joint return actually filed with the I.R.S. is attached to each Nebraska return;
- A copy of a federal return for each spouse computed as if married filing separate federal returns had been filed is attached to each Nebraska return;
- Each Nebraska return includes the full name and social security number of both spouses; and
- Each Nebraska return is signed by both spouses.

Compliance with these conditions is an agreement that both spouses are jointly and severally liable for any tax due, and that any refund due at the time of filing the Nebraska returns may be paid to both spouses jointly, or to either spouse.

(Turn to the back page for the continuation of this section)

How to file if:

- The military member is not a Nebraska resident, but is stationed (physically present) in Nebraska,*
- The spouse is in Nebraska for at least part of the year; and
- A federal joint return was filed.

All filers must start by reporting their entire federal adjusted gross income on Form 1040N, then complete the appropriate schedules.

Income from Nebraska sources includes income, other than active duty military service pay, that is earned in Nebraska from the conduct of a trade or business, from real or personal property, or from civilian employment.

IN MOST SITUATIONS, A NEBRASKA RETURN DOES NOT HAVE TO BE FILED IF A NONRESIDENT HAS NO NEBRASKA SOURCE INCOME.

Situation	Filing Status	Residence Status	Income Taxed
Military Member whose Spouse is in state less than 6 months.	Joint Nebraska return.	Nonresident filing status using Schedule III.	Nebraska source income.
Military Member whose Spouse is in state over 6 months or whose Spouse changes residence to this state.	Two Returns Filed		
	Military member files as “married filing separate.”	Military member files as nonresident using Schedule III.	Nebraska source income.
	Spouse files as “married filing separate.”	Spouse files as a partial-year resident for the period of time in this state, using Schedule III.	Nebraska source income plus any other income, such as interest or dividends, received while in Nebraska, and not taxed in another state.
	Election To File A Joint Nebraska Return		
	Both may elect to be considered Nebraska residents and file a joint return.	Both file as partial-year residents for the period the spouse is in this state, using Schedule III.	The military member and spouse are taxed on their total income that is not taxed in another state , (but not including active duty military pay received), during the period of time the spouse is in this state.
Military Member whose Spouse is a full-year resident of this state.	Two Returns Filed		
	Military member files as “married filing separate.”	Military member files as nonresident using Schedule III.	Nebraska source income.
	Spouse files as “married filing separate.”	Spouse files as a resident.	All income; a Schedule II credit, if applicable, is allowed.
	Election To File A Joint Nebraska Return		
	Both may elect to be considered Nebraska residents and file a joint return.	Both file as residents.	The military member and spouse are taxed on their total income, (but not including active duty military pay), received during the year. A Schedule II credit, if applicable, is allowed.

* Where the military member is a Nebraska resident (claims Nebraska as his or her legal domicile), see the section entitled “Do military servicemembers who are Nebraska residents file a Nebraska return?”

When must you file a married filing separate return?

A spouse must file a Nebraska married filing separate return when the spouse filed a federal married filing separate return and the spouse either is a Nebraska resident or has income from Nebraska sources.

A married filing separate return must also be filed when one spouse is a Nebraska resident or partial-year resident while the other spouse is a nonresident and, although they filed a federal married filing joint return, they did not elect to file a joint return for Nebraska. The resident spouse must file a return when he or she received any income. The nonresident spouse must file when he or she had Nebraska source income.

What Is Subject To Tax. The married filing separate return must include all income that would be properly included in a federal married filing separate return. Income from jointly held property is presumed to belong equally to the owners and, when owned by a married couple, one-half of the income would be reportable by each spouse.

The spouse claiming military dependents as exemptions on a married filing separate Nebraska return must have earned more than half of the income used to support the family. A spouse earning one-third of the income cannot claim one of the family's three children, because support payments are presumed to go to all children equally.

Itemized deductions for joint expenses that are paid out of joint funds such as mortgage interest are presumed to be deductible equally by the spouses. The deductions based on income are divided between the spouses according to the ratio between each spouse's income and the total income. Deductions that relate to a specific person, such as medical expenses or professional associations, may only be deducted by the person who incurred the expense.

A spouse required to itemize under the federal rules for separate returns may use the larger of the itemized deductions or the Nebraska standard deduction.

The **credit for child and dependent care** cannot be taken by a married filing separate filer unless the taxpayer's federal return was filed as married filing separate and the credit was allowed on that return.

Adjustments to income, such as an IRA deduction, can only be taken if they would be allowable for that spouse.

Additional information for married filing separate returns can be obtained by referring to the instructions for the federal return.

Other Information

Statute Of Limitations. A claim for refund must be filed within two years of the time the tax was paid, or within three years of the time the original return was filed. The amount of the refund is limited to the amount paid during the preceding two or three years, respectively. Payments made before the due date of the return are considered to have been made on the due date.

Abatement of penalty or interest is allowed in limited situations. Request abatements by filing an Application for Abatement of Penalty, Form 21, or Application for Abatement of Interest, Form 21A.

Reserve And National Guard Pay. Pay received for state service in the Nebraska National Guard is taxable by Nebraska regardless of the residence of the servicemember. All of this pay that is subject to federal withholding is also subject to Nebraska withholding. If a nonresident of Nebraska is called up to active duty from the Nebraska Guard, this active duty income is deducted on Nebraska Schedule I.

Pay for service in the Reserves and other than state service in the National Guard is pay for military service. This pay is taxable only by the state of legal residence of the member. It may be subject to withholding by the state of legal residence.

Any above-the-line deduction, before calculation of federal adjusted gross income, allowed federally to National Guard and Reserve members for overnight transportation, meals, and lodging expenses for travel more than 100 miles to attend Guard and Reserve meetings is also allowed for state purposes.

FOR NEBRASKA TAX ASSISTANCE

For All Tax Programs Except Motor Fuels

Contact your regional office or call **1-800-742-7474** (toll free in NE and IA)
or **1-402-471-5729**

Nebraska Department of Revenue Web site address: www.revenue.state.ne.us

A copy of the Taxpayer Bill of Rights is available by calling any of our regional offices or visiting our Web site.

SCOTTSBLUFF

Panhandle State Office Complex
4500 Avenue I, Box 1500
Scottsbluff, Nebraska 69363-1500
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NORTH PLATTE

Craft State Office Building
200 South Silber Street
North Platte, Nebraska 69101-4200
Telephone (308) 535-8250

GRAND ISLAND

TierOne Bank Building, Suite 460
1811 West Second Street
Grand Island, Nebraska 68803-5469
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NORFOLK

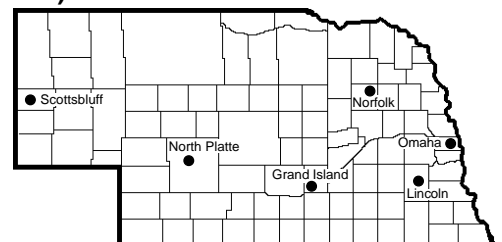
304 North 5th Street, Suite "D"
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OMAHA

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LINCOLN

Nebraska State Office Building
301 Centennial Mall South
Lincoln, Nebraska 68509-4818
Telephone (402) 471-5729



For Motor Fuels tax programs only call toll free 1-800-554-3835 (Lincoln residents call 471-5730).

Hearing-impaired individuals may call the Text Telephone (TT) at 1-800-382-9309. TDD (Telecommunications Device for the Deaf) is designated by the use of "TT," which is consistent with the Americans with Disabilities Act.